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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,766	01/12/2004	Rodney Bruce Hawkinson	RB-001	1960
7590	11/15/2005		EXAMINER	
Bradley J. Batsch 3601 Avendale Drive Austin, TX 78738			NEWTON, JARED W	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/755,766		HAWKINSON, RODNEY BRUCE	
	Examiner		Art Unit	
	Jared W. Newton		3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6 and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,651,828 to Dimattio et al.

In regard to claim 1, Dimattio discloses a display shelf with dividers forming individual bins, said shelf comprising a base surface 14, a plurality of recessed troughs forming a plurality of slots 38 having a plurality of holes 52 formed therein; and a plurality of dividers 34, each one of said dividers are adapted to be inserted into one of said plurality of slots 38 of said base 14, each one of said plurality of dividers including at least one tab portion 44 such that said at least one tab portion is aligned with a respective hole 52 in said base for securing said one of said plurality of dividers to said base (see FIGS. 1 and 4).

In regard to claim 2, Dimattio further discloses said plurality of dividers 34 comprising an L-shaped configuration (see FIG. 7) having a first segment (received in slot or recess 38) and a second segment (extending vertically from slot or recess 38),

said first segment adapted to be recessed in one of said plurality of slots 38 when said at least one of said plurality of dividers is inserted into said base.

In regard to claim 3, Dimattio further discloses the top surface of said first segment (see FIG. 7) as lying in a substantially coplanar relationship with the upper landings 40 of the base surface 14.

In regard to claim 4, as shown in Figure 7, Dimattio further discloses said second segment of said divider 34 oriented substantially perpendicular to said base 14 when said at least one of said plurality of dividers 34 is inserted into said base 14.

In regard to claims 5 and 6, Dimattio further discloses said plurality of dividers 34 forming L-shaped configurations having first segments and second segments and wherein said at least one of said plurality of dividers 34 may be inserted into one of said plurality of slots in either a first orientation or a second orientation (see FIG. 7) for adjusting a width between adjacent ones of said plurality of dividers, and wherein said first orientation forms an L-shaped configuration (see divider 34 on the right hand side of Figure 7) when said at least one of said plurality of dividers 34 is inserted into said base 14 and said second orientation forms a reverse L-shaped configuration (see divider 34 on the left hand side of Figure 7) when said at least one of said plurality of dividers 34 is inserted in to said base 14. Dimattio recites, " As shown in FIGS. 4 and 7, in a preferred configuration, a pair of divider assemblies 30 is pivotally mounted to the shelf 10 around a single landing 40. In the preferred embodiment, one partition 34 is mounted to pivot in the clockwise direction about a landing 40, while a second partition

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34 is mounted to pivot counter-clockwise about the same landing 40" (see COLUMN 5, LINE 36).

In regard to claim 9, Dimattio further discloses a plexiglass partition 72 disposed along the front edge of said base used as a stop for preventing items from falling over a front edge of said base 14 (see FIG. 2).

In regard to claim 10, Dimattio discloses the base, slots, holes, and dividers as advanced above. Dimattio further discloses a plurality of dividers 34 for insertion into said plurality of slots 38 thereby forming a plurality of bins of the display rack, at least one of said plurality of dividers 34 being capable of insertion into a selected one of said plurality of slots 38 in either a first orientation (see FIG. 6) or a second orientation (see FIG. 7), wherein when said at least one of said plurality of dividers 34 is inserted into said selected one of said plurality of slots 38 in said first orientation a first distance between said at least one of said plurality of dividers and an adjacent one of said plurality of dividers is achieved, and wherein when said at least one of said plurality of dividers is inserted into said selected one of said plurality of slots in said second orientation a second distance between said at least one of said plurality of dividers and said adjacent one of said plurality of dividers is achieved thereby allowing for adjustment of a width of a bin. As is shown in Figures 6 and 7 to Dimattio, said dividers 34 alternate between first and second orientations, wherein various distances between adjacent dividers are achieved depending on the orientation of said dividers.

In regard to claim 11, Dimattio further discloses at least one of said plurality of dividers comprising a first segment (received in slot or recess 38) and a second

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segment (extending vertically from slot or recess 38), said first segment adapted to be recessed in one of said plurality of slots 38 when said at least one of said plurality of dividers is inserted into said base so that the top surface of said first segment (see FIG. 7) lies in a substantially coplanar relationship with the upper landings 40 of the base surface 14.

In regard to claims 12 and 13, Dimattio further discloses at least one of said plurality of dividers 34 including a plurality of locking clips or wedges 48 such that said plurality of locking wedges 48 align and mate with said plurality of holes 52 of said selected one of said plurality of slots 38 upon insertion of said at least one of said plurality of dividers 34 into said selected one of said plurality of slots 38 wherein said locking clips or wedges 48 align and mate with at least one of said plurality of holes 52 of said selected one of said plurality of slots (see FIG. 4).

In regard to claim 14, Dimattio shows L-shaped dividers 34 (see FIG. 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over '828 to Dimattio as applied to claims 1-6 and 9-14 above, and further in view of U.S. Patent No. 6,886,699 to Johnson et al.

Dimattio discloses a device comprising all of the limitations of claims 1-6, but does not disclose said base including a plurality of rails on a bottom side of said base for elevating said base. Johnson discloses a merchandising system comprising a base, or horizontal flat portion 22, from which protrusions or rails 24 extend downwardly from said base 22 (see FIG. 1). Johnson recites, "protrusions 24 may protrude from a bottom side 30 of horizontal portion 22 to support the horizontal portion 22 above an existing surface..." (see COLUMN 3, LINE 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the protrusions as disclosed by Johnson on the bottom of the base as disclosed by Dimattio so as to raise said base. The motivation for including the raising protrusions would be that as cited by Johnson, to provide "structural support, strength, stiffness, and rigidity" (see COLUMN 3, LINE 25).

In regard to claims 18 and 19, Dimattio discloses all of the limitations of claims 18 and 19 as advanced in the above 35 U.S.C. 102(e) rejections, except for the rails. Johnson discloses the rails or protrusions as set forth above. The motivation for including said rails or protrusions is also set forth above in the claim 7 rejection.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over '828 to Dimattio as applied to claims 1-6 above, and further in view of U.S. Patent No. 4,901,869 to Hawkinson et al.

Dimattio discloses a device comprising all of the limitations of claims 1-6, but does not disclose said base including at least one breakpoint region for breaking off a portion of said base thereby adjusting at least one dimension of said base. In patent No. '869, the present inventor, Hawkinson, discloses a variably sized merchandise display

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rack comprising panels and walls that are readily broken off along straight lines to selected height and width dimensions (see COLUMN 1, LINE 31). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the breaking feature for the shelves as disclosed by Hawkinson on the shelf as disclosed by Dimattio. The motivation would be to provide the shelf to Dimattio with a means of varying size, so as to readily adapt to various sized mounting brackets 24.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over '828 to Dimattio as applied to claims 1-6 above, and further in view of U.S. Patent Application Publication No. US 2002/0170866 to Johnson et al.

Dimattio discloses a device comprising all of the limitations of claims 1-6, but does not disclose at least one of said plurality of dividers having a T-shaped configuration being capable of insertion into another one of said plurality of slots. '866 to Johnson discloses a merchandising system comprising dividers 20 shown as having a generally T-shaped configuration (see FIG. 2), and inserted into slots of connector 40. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the T-shaped dividers as disclosed by Johnson within the slots of the shelf as disclosed by Dimattio. The motivation for including T-shaped dividers would be to further secure the dividers by providing feet on both sides adapted to insert into adjacent slots so that said dividers are not vulnerable to collapsing to one side or the other as would be a possible case with only L-shaped dividers.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over '828 to Dimattio as applied to claims 1-6 above, and further in view of U.S. Patent No. 4,785,943 to Deffner et al.

Dimattio discloses a device comprising all of the limitations of claim 10, but does not disclose drainage holes. Deffner discloses a storage and dispensing shelf system comprising openings 34 allowing cooling air to circulate against the bottoms of stored cans 20, and further allowing liquid build up in the tray modules 12 to drain from the tray modules. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the drainage holes as disclosed by Deffner on the shelf as disclosed by Dimattio. The motivation would be to provide a means of allowing cool air to be distributed to all portions of the stored items on said shelf, as set forth by Deffner.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over '828 to Dimattio in view of '699 to Johnson as applied to claims 18 and 19 above, and further in view of U.S. Patent No. '943 to Deffner et al.

Dimattio in view of Johnson discloses a device comprising all of the limitations of claim 18 except the draining holes. Deffner discloses the draining holes as set forth in the claim 16 rejection advanced above. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the draining holes as disclosed by Deffner on the shelf as disclosed by Dimattio for reasons advanced above in the claim 16 rejection.

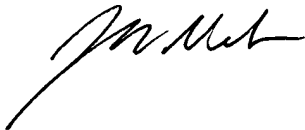
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWN
November 1, 2005



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